

shall be included in direct earned premium (as described in § 50.5(d)(1) or 50.5(d)(2)) of the participant insurer.

Subpart E—Self-Insurance Arrangements; Captives [Reserved]

Subpart F—Claims Procedures

§ 50.50 Federal share of compensation.

(a) *General.* (1) The Treasury will pay the Federal share of compensation for insured losses as provided in section 103 of the Act once a Certification of Loss required by § 50.53 is deemed sufficient. The Federal share of compensation under the Program shall be:

(i) 90 percent of that portion of the insurer's aggregate insured losses that exceed its insurer deductible during each Program Year through Program Year 4, and

(ii) 85 percent of that portion of the insurer's aggregate insured losses that exceed its insurer deductible during Program Year 5.

(2) The percentages in paragraphs (a)(1)(i) and (ii) are both subject to any adjustments in § 50.51 and the cap of \$100 billion as provided in section 103(e)(2) of the Act.

(b) *Program Trigger amounts.* Notwithstanding paragraph (a) or anything in this Subpart to the contrary, no Federal share of compensation will be paid by Treasury unless the aggregate industry insured losses resulting from a certified act of terrorism occurring after March 31, 2006 exceed the following amounts:

(1) For a certified act of terrorism occurring after March 31, 2006 and before January 1, 2007: \$50 million;

(2) For a certified act of terrorism occurring in calendar year 2007: \$100 million.

(c) *Insured losses after March 31, 2006.* For all purposes of subpart F, insured loss or insured losses or aggregate insured losses resulting from acts of terrorism after March 31, 2006 shall be limited to those insured losses resulting from Program Trigger events.

(d) *Conditions for payment of Federal share.* Subject to paragraph (e) of this section, Treasury shall pay the appropriate amount of the Federal share of

compensation to an insurer upon a determination that:

(1) The insurer is an entity, including an affiliate thereof, that meets the requirements of § 50.5(f);

(2) The insurer's insured losses, as defined in § 50.5(e) and limited by § 50.50(c) (including the allocated dollar value of the insurer's proportionate share of insured losses from a State residual market insurance entity or State workers' compensation fund as described in § 50.35), have exceeded its insurer deductible as defined in § 50.5(g);

(3) The insurer has paid or is prepared to pay an underlying insured loss, based on a filed claim for the insured loss;

(4) Neither the insurer's claim for Federal payment nor any underlying claim for an insured loss is fraudulent, collusive, made in bad faith, dishonest or otherwise designed to circumvent the purposes of the Act and regulations;

(5) The insurer had provided a clear and conspicuous disclosure as required by §§ 50.10 through 50.19;

(6) The insurer offered coverage for insured losses and the offer was accepted by the insured prior to the occurrence of the loss;

(7) The insurer took all steps reasonably necessary to properly and carefully investigate the underlying insured loss and otherwise processed the underlying insured loss using appropriate insurance business practices;

(8) The insured losses submitted for payment are within the scope of coverage issued by the insurer under the terms and conditions of the policies for commercial property and casualty insurance as defined in § 50.5(n); and

(9) The procedures specified in this Subpart have been followed and all conditions for payment have been met.

(e) *Adjustments.* Treasury may subsequently adjust, including requiring repayment of, any payment made under paragraph (d) of this section in accordance with its authority under the Act.

(f) *Suspension of payment for other insured losses.* Upon a determination by Treasury that an insurer has failed to meet any of the requirements for payment specified in paragraph (d) of this section for a particular insured loss, Treasury may suspend payment of the

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Federal share of compensation for all other insured losses of the insurer pending investigation and audit of the insurer's insured losses.

(g) *Aggregate industry losses.* Treasury will determine the amount of aggregate industry insured losses resulting from a certified act of terrorism. If such aggregate industry insured losses exceed the applicable Program Trigger amounts specified in paragraph (b) of this section, Treasury will publish notice in the FEDERAL REGISTER that the act of terrorism is a Program Trigger event.

[71 FR 27571, May 11, 2006]

§ 50.51 Adjustments to the Federal share of compensation.

(a) *Aggregate amount of insured losses.* The aggregate amount of insured losses of an insurer in a Program Year used to calculate the Federal share of compensation shall be reduced by any amounts recovered by the insurer as salvage or subrogation for its insured losses in the Program Year.

(b) *Amount of Federal share of compensation.* The Federal share of compensation shall be adjusted as follows:

(1) *No excess recoveries.* For any Program Year, the sum of the Federal share of compensation paid by Treasury to an insurer and the insurer's recoveries for insured losses from other sources shall not be greater than the insurer's aggregate amount of insured losses for acts of terrorism in that Program Year. Amounts recovered for insured losses in excess of an insurer's aggregate amount of insured losses in a Program Year shall be repaid to Treasury within 45 days after the end of the month in which total recoveries of the insurer, from all sources, become excess. For purposes of this paragraph, amounts recovered from a reinsurer pursuant to an agreement whereby the reinsurer's right to any excess recovery has priority over the rights of Treasury shall not be considered a recovery subject to repayment to Treasury.

(2) *Reduction of amount payable.* The Federal share of compensation for insured losses under the Program shall be reduced by the amount of other compensation provided by other Federal programs to an insured or a third party to the extent such other com-

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pensation duplicates the insurance indemnification for those insured losses.

(i) *Other Federal program compensation.* For purposes of this section, compensation provided by other Federal programs for insured losses means compensation that is provided by Federal programs established for the purpose of compensating persons for losses in the event of emergencies, disasters, acts of terrorism, or similar events. Compensation provided by Federal programs for insured losses excludes benefit or entitlement payments, such as those made under the Social Security Act, under laws administered by the Secretary of Veteran Affairs, railroad retirement benefit payments, and other similar types of benefit payments.

(ii) *Insurer due diligence.* Each insurer shall inquire of each of its policyholders, insureds, and claimants whether the person receiving insurance proceeds for an insured loss has received, expects to receive, or is entitled to receive compensation from another Federal program for the insured loss, and if so, the source and the amount of the compensation received or expected. The response, source, and such amounts shall be reported with each underlying claim on the bordereau specified in § 50.53(b)(1).

§ 50.52 Initial Notice of Insured Loss.

Each insurer shall submit to Treasury an Initial Notice of Insured Loss, on a form prescribed by Treasury, whenever the insurer's aggregate insured losses (including reserves for "incurred but not reported" losses) within a Program Year exceed an amount equal to 50 percent of the insurer's deductible as specified in § 50.5(g). Insurers are advised the form for the Initial Notice of Insured Loss will include an initial estimate of aggregate losses for the Program Year, the amount of the insurer deductible and an estimate of the Federal share of compensation for the insurer's aggregate insured losses. In the case of an affiliated group of insurers, the form for the Initial Notice of Insured Loss will include the name and address of a single designated insurer within the affiliated group that will serve as the single point of contact for the purpose